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CITATIONS

In the Supreme Court of the United States

OCTOBER TERM, 1948

No. 115

ALDO GUERRINI, PETITIONER

v.

THE UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion, findings of fact and conclusions of law of the United States District Court for the Eastern District of New York (R. 129–133) are not reported. The opinion of the United States Circuit Court of Appeals for the Second Circuit (R. 145–150) is reported at 167 F. 2d 352.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered March 31, 1948 (R. 151). The petition for a writ of certiorari was filed on June 23,

1948. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether, apart from any question of negligence or lack of contributory negligence, a shipowner is absolutely liable for personal injuries sustained by an employee of an independent contractor engaged in cleaning the ship's tanks while the ship is docked in a private shipyard for general overhauling and repair.

STATUTES INVOLVED

The pertinent provisions of the Suits in Admiralty Act (Act of March 9, 1920, 41 Stat. 525, 46 U. S. C. 741 *et seq.*) are set forth in the Appendix, *infra*, pp. 10–11.

STATEMENT

In October 1944, the S. S. *William B. Giles*, a vessel owned and operated by the United States and employed as a troop transport, returned to the United States from a European voyage (R. 129, 132). Prior to another voyage to England with an additional shipload of troops, the vessel was docked at a wharf of the Continental Shipbuilding Company's Brooklyn shipyard (R. 21, 97) for the purpose of general repairs and overhauling (R. 98, 127, 132, 145). Continental hired the Bell Contracting Company, as a subcontractor, to clean the ship's boilers and tanks as part of the general

overhauling (R. 76, 145). Petitioner, a bricklayer by trade (R. 24), was engaged, on October 4, 1944, in this tank-cleaning work (R. 21) as an employee of the subcontractor (R. 20), when the injuries he complains of were sustained.

On October 15, 1945, petitioner filed in the District Court for the Eastern District of New York a libel against the United States under the provisions of the Suits in Admiralty Act of 1920 "and all Acts supplemental and amendatory thereto,"[1] claiming $25,000 in damages for his personal injuries and alleging that such injuries were caused by his having slipped and fallen as a result of the negligence of the United States in allowing oil and grease to accumulate on the deck where libellant was required to work (R. 3–5). The answer of the United States to the libel denied negli-

[1](R. 3, 5, 145.) The petition (Pet. 3) states that this is a suit under the Suits in Admiralty Act and, in fact, quotes the pertinent provisions, including Section 2 of that statute. Section 2, it must be noted, confers a right of suit against the United States only in those situations where the United States-owned vessel "is employed as a merchant vessel." As already indicated the *William B. Giles* was not employed as a merchant vessel but as a troop transport. It would therefore appear that there is no jurisdiction to entertain the instant suit under the Suits in Admiralty Act itself. *The Western Maid*, 257 U. S. 419, 431; *Bradey* v. *United States*, 151 F. 2d 742 (C. C. A. 2), certiorari denied, 326 U. S. 795. However, in view of the general allegations of the libel, of the cognate provisions of the Public Vessels Act (43 Stat. 1112, 46 U. S. C. 781 *et seq.*) and of the present posture of the instant case, no objection to jurisdiction is now urged.

gence and alleged contributory negligence and assumption of risk by petitioner (R. 7–8).

At the conclusion of the trial, which was held in May, 1947 (R. 18) and in which petitioner conceded the only issue to be the "very narrow" one of negligence—that is, whether petitioner fell into the hold because he slipped on some grease that the shipowner negligently had left on the deck (R. 20)—the district court found that the United States was negligent in leaving the grease on the deck, that petitioner slipped as a result of such negligence, sustaining personal injury damages amounting to $10,549.10, and that there was no contributory negligence on the part of petitioner (R. 129–133).

On appeal, the court below, holding that the negligence of the United States depended upon whether the grease had been on the deck for a period long enough to have been noticed by the officer on watch, unanimously remanded the case to the district court for a specific finding on that issue (R. 150). The district court was further instructed, in the event it should make such a finding, to award damages to petitioner in one-fourth of the amount theretofore decreed since petitioner was "much more negligent" than the United States when he selected the greasy patch to stand in while working on deck (R. 150).

ARGUMENT

1. The court below properly refused to extend the doctrine of *Seas Shipping Co.* v. *Sieracki*, 328

U. S. 85, to a situation in which petitioner, as an employee of an independent contractor, was engaged in cleaning the tanks of the vessel, while it was docked at a shipyard for general repairs and overhauling.

a. In the *Sieracki* case, this Court held that a shipowner is absolutely liable, irrespective of negligence, for injuries caused by his vessel's unseaworthiness to a longshoreman during the period of time when he is actually engaged upon a ship in the loading or unloading thereof. This Court has only recently denied certiorari in a case in which an attempt was made to expand the *Sieracki* case to include longshoremen performing repair, rather than loading or unloading, services on a vessel. *Bruszewski* v. *Isthmian S. S. Co.*, 66 F. Supp. 210, 213 (E. D. Pa.), affirmed, 163 F. 2d 720 (C. C. A. 3), certiorari denied, February 2, 1948 (No. 475, Oct. T. 1947). The soundness of rejecting such an expansion is demonstrated by the fact that the repair services there involved were in no sense a maritime service, similar to that performed by seamen, but were properly work for a shipyard, as is clear from the trial court's opinion in that case. Similarly, this Court has denied certiorari in another case in which the court below refused to hold the shipowner absolutely liable to employees of an independent contractor, engaged in cleaning the ship's tank valves. *Puleo* v. *Moss & Co.*, 159 F. 2d 842 (C. C. A. 2) certio-

rari denied, 331 U. S. 847.[2] The tank cleaning services involved in this instant case, performed through subcontractors as an incident of the general repair and overhauling of the vessel in a private shipyard, are, it is submitted, no different from the services in the cases mentioned and should not therefore be viewed as falling within the scope of the *Sieracki* case.[3]

b. That the applicability of the *Sieracki* case to the facts here involved would be a strained extension of the absolute liability doctrine, is further attested to by the circumstance that petitioner himself never relied upon unseaworthiness in the district court nor in the court below. The gravamen of the libel filed in the district court is negligence, which is of course immaterial in an action based on liability for unseaworthiness.[4] More-

[2] Other federal courts, adhering to the same view, have held the *Sieracki* case inapplicable in similar situations. *Meyers* v. *Pittsburgh Steamship Co.*, 165 F. 2d 642, 644 (C. C. A. 6); *Armento* v. *United States*, 74 F. Supp. 198, 200 (E. D. N. Y.).

[3] In connection with the character of petitioner's services, it should be noted that he is a bricklayer by trade and was assigned to clean the tanks only because of lack of regular bricklaying work (R. 19, 24). Moreover, his express disclaimer of being a "sailor" (R. 36) was confirmed by cross-examination: "Q. And you were on the port or starboard side of the ship? A. You will have to talk from front or back because I don't know much about ships" (R. 31).

[4] In *Desroschers* v. *United States*, 105 F. 2d 919 (C. C. A. 2), certiorari denied, 308 U. S. 519, it was held that even though a suit by a ship's carpenter, based on negligence of the United States as shipowner, was required to proceed in admiralty because of the Suits in Admiralty Act, that requirement did not convert the suit into a proceeding for damages

over, in the course of the trial, petitioner, conceding that the only issue was that of negligence, directed his testimony toward the alleged negligence of the shipowner and made absolutely no effort to establish unseaworthiness. Even before the court below, the petitioner, as expressly stated in that court's opinion, still did not assert any claim based on unseaworthiness. That opinion accurately states that "the only issues are whether the ship was negligent, whether the libellant was guilty of contributory negligence, and what are the proper damages" (R. 145). It is only here (Pet. 6) that the *Sieracki* case is seized upon in an attempt to have this Court consider the expansion of the absolute liability doctrine to situations in which this Court has already declined to consider such extensions.

2. With respect to petitioner's contention (Pet. 6–10) that the court below improperly followed New York rather than federal maritime law, it seems clear that, even if well-founded, petitioner has not been prejudiced thereby. Initially, it must be noted that the discussion of the *Sieracki* case by the court below shows that it would have adopted the federal maritime law of unseaworthiness had the facts of the instant case justified such action. Further indication of the reliance by the court below on federal maritime law is evident from the fact that

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arising out of unseaworthiness and thereby relieve libellant of the need of proving negligence. See also *McGhee* v. *United States*, 165 F. 2d 287, 290 (C. C. A. 2).

it viewed petitioner's contributory negligence not as a bar to any recovery, but only in reduction of damages.[5] In any event, as to the precise question on which the court did refer to New York law—the negligence of a shipowner in allowing oil or grease to accumulate in places where men must work—the federal maritime law, just as the New York law, recognizes that a shipowner has a duty, "to prevent excessive accumulations of oil in places where they would be dangerous to a person rightfully using the deck." *Holm* v. *Cities Service Transportation Co.*, 60 F. 2d 721, 722 (C. C. A. 2); see *McGill* v. *Michigan S. S. Co.*, 144 Fed. 788 (C. C. A. 9), certiorari denied, 203 U. S. 593; *La Guerra* v. *Brasileiro*, 124 F. 2d 553 (C. C. A. 2), certiorari denied, 315 U. S. 824; *Consolidation Coastwise Co.* v. *Conley*, 250 Fed. 679 (C. C. A. 1); *Grillo* v. *Royal Norwegian Government*, 139 F. 2d 237 (C. C. A. 2). Consequently, since petitioner's rights as determined by the applicable federal maritime law would not have produced a result different than that arrived at by the court below, it is clear that the error, if any, was harmless, and

[5] Accordingly, the direction to the district court to reduce the decree to one fourth of the damages originally awarded, if the necessary negligence finding is supplied, was proper and, despite petitioner's contention to the contrary (Pet. 11), not in any way inconsistent with the case of *Socony-Vacuum Oil Co.* v. *Smith*, 305 U. S. 424, which simply held that the admiralty rule of comparative negligence applies in mitigation of damages in Jones Act suits even though the injuries were sustained as a result of use of defective appliance with knowledge that a safe one was available.

hence does not warrant review. *West* v. *Camden*, 135 U. S. 507, 521; *McCandless* v. *United States*, 298 U. S. 342, 347–348.

CONCLUSION

The decision of the court below is correct, and the alleged conflict as to choice of law could not here produce a different result. The petition for a writ of certiorari should therefore be denied.

Respectfully submitted.

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JULY 1948.

APPENDIX

Sections 1 and 2 of the Suits in Admiralty Act (Act of March 9, 1920, 41 Stat. 525, 46 U. S. C. 741, *et seq.*) provide as follows:

SEC. 1. That no vessel owned by the United States or by any corporation in which the United States or its representatives shall own the entire outstanding capital stock or in the possession of the United States or of such corporation or operated by or for the United States or such corporation, and no cargo owned or possessed by the United States or by such corporation, shall hereafter, in view of the provision herein made for a libel in personam, be subject to arrest or seizure by judicial process in the United States or its possessions: *Provided*, That this Act shall not apply to the Panama Railroad Company.

SEC. 2. That in cases where if such vessel were privately owned or operated, or if such cargo were privately owned and possessed, a proceeding in admiralty could be maintained at the time of the commencement of the action herein provided for, a libel in personam may be brought against the United States or against such corporation, as the case may be, provided that such vessel is employed as a merchant vessel or is a tug boat operated by such corporation. Such suits shall be brought in the district court of the United States for the district in which the parties so suing, or any of them, reside or have their principal place

of business in the United States, or in which the vessel or cargo charged with liability is found. The libelant shall forthwith serve a copy of his libel on the United States attorney for such district and mail a copy thereof by registered mail to the Attorney General of the United States, and shall file a sworn return of such service and mailing. Such service and mailing shall constitute valid service on the United States and such corporation. In case the United States or such corporation shall file a libel in rem or in personam in any district, a cross-libel in personam may be filed or a set-off claimed against the United States or such corporation with the same force and effect as if the libel had been filed by a private party. Upon application of either party the cause may, in the discretion of the court, be transferred to any other district court in the United States.

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